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RULSDMK/DEPT OF TRANSPORTATION WASHDC
RHMFIUU/HQ USSOUTHCOM MIAMI FL
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TAGS: [CASC](#) [EAIR](#) [PGOV](#) [BR](#)
SUBJECT: Update on GOL-Legacy Crash Legal Case

Ref: Brasilia 600 and previous

11. (SBU) Summary: In a surprise move, the Brazilian federal prosecutor in charge of the criminal investigation into the September 29 air collision between a business jet and GOL airliner indicted four air traffic controllers for the accident, one on serious charges of having acted deliberately. The federal police investigation had only recommended the indictment of the U.S. citizen pilots of the business jet. The prosecutor indicted the pilots, and three other controllers, on less serious charges. The federal judge in charge of the case accepted the indictments and set dates for questioning of the defendants on August 27 and 28. It is unclear whether the U.S. pilots will be required to return for testimony. The accusations against the controllers were repeated in Brazilian Senate committee hearings on the accident and caused a sea change in press reporting on the issue. End Summary.

12. (U) Brazilian federal prosecutor Thiago Lemos de Andrade indicted Brazilian air traffic controller Jomarclo Fernandes dos Santos for intentional criminal conduct that led to the September 29, 2006 air collision between a Legacy business jet and a GOL commercial airliner. (All 154 persons aboard the GOL flight perished, making this the worst aviation accident in Brazilian history.) The prosecutor made this request to federal judge Murilo Mendes in Sinop, Mato Grosso, the capital of the state in which the accident took place, on May 25. The recommendation came as a surprise to observers as the Federal Police report submitted to the prosecutor, after a seven-month investigation, did not recommend action against controllers, claiming that as they were in the military they were beyond civilian purview.

13. (U) The prosecutor also recommended indictments of three other controllers and the two U.S. citizen Legacy pilots, Joseph Lepore and Jan Paladino, for unintentional criminal conduct. In the pilots' case, this was for involuntary manslaughter and exposing an

aircraft to danger. The prosecutor claimed the pilots accidentally turned off their transponder, disabling both airplanes' collision avoidance systems and limiting air traffic controllers' ability to confirm the Legacy's altitude. The federal police report focused on the actions of the pilots.

¶4. (U) In the case of the controllers, the prosecutor claims that Santos did not properly inform the controllers who took over for him after his shift that the Legacy's transponder was not functioning and that he had been unable to contact the plane.

¶5. (U) Judge Mendes issued an order accepting the indictments on June 1, setting dates for questioning of the defendants on August 27 and 28. His order states that the U.S. pilots will be required to testify in Brazil.

¶6. (SBU) The pilots' lawyers, after a preliminary analysis of the order, believed that the pilots may be able to make a deposition in front of a U.S. court for use by the Brazilian authorities.

¶7. (U) The indictment against the controllers was mirrored by a similar change of focus in the Brazilian Senate Investigative Committee (CPI) created to look into the accident and in Brazilian press coverage. Previously, press coverage had focused on the Legacy pilots as the major culprits of the accident. Following the indictment, most articles focused on culpability of the controllers, while describing the pilots as secondary contributors to the accident.

¶8. (U) A chief member of the CPI and Brazilian air officials laid the chief blame for the accident on controllers during hearings held the week of May 28. Senator Demostenes Torres, who will draft the final CPI report, said that Santos, the flight controller, was most to blame. His statement followed testimony from three military

BRASILIA 00001006 002 OF 003

flight controllers, on duty during the midair collision, who told the CPI that they blamed the American pilots of the Legacy jet and faulty air traffic control equipment for the accident. The controllers claimed that the Legacy pilots should have adjusted their altitude according to the flight plan and criticized Brazil's air traffic control system. Demostenes replied that "the [air traffic control] system has shortcomings, but the [Gol] accident had human causes, especially on the part of [military controller] Jomarclo [Santos]. The Legacy pilots also contributed decisively."

Officials of the Brazilian Air Force's Center for the Investigation and Prevention of Aeronautical Accidents (CENIPA) later told the CPI that the crash of the Gol flight could have been prevented by the controllers who were on duty. "If all the rules had been followed, there would have been no accident," according to Brigadier Jorge Kersul.

¶9. (U) The Brazilian Air Force announced on May 31 that it would open an investigation into the responsibilities of the flight controllers who were on duty the day of the Gol airliner crash. According to press reports, the inquiry could take up to two months and after this period the air traffic controllers might be tried by military justice.

¶10. (U) The Brazilian indictment process is very different than the U.S. process. The first step was completed when the Federal Police finished their investigation, known as an "inquerito," the purpose of which was to determine the facts of the case. They then submitted a "relatorio" (report) to the prosecutor. (The "relatorio" makes an "indiciamento" of those whom the police believe qualify as having committed a crime, though this is not an indictment in U.S. sense, but closer to a recommendation for indictment.) The prosecutor then indicted those he considered guilty. The federal judge has now accepted the indictments and those indicted are now defendants.

¶11. (U) The first ruling of the court ordered service of summons on the defendants, so that they were officially informed of the indictments. As the pilots do not reside in Brazil, service of summons would have to be carried out in the place of their domicile by means of a letter rogatory. Thereafter begins the evidentiary

phase: the court will question the defendants. Subsequently, the judge would question witnesses for the prosecution and then witnesses for the defense. At some point, the court will be provided documents by the parties, such as the final report of the Air Force, and perhaps proceedings of the CPI. Eventually the prosecutor and defense counsel will file their final briefs and the court will issue a decision. There is no jury and there is no trial in the U.S. sense (the case is "on trial," mostly in writing, from the moment the judge accepts the indictment). In every criminal case, there is the possibility of appeal, and the Federal Court of Appeals, in Brasilia, would reexamine the facts in the case of an appeal.

¶12. (SBU) Comment: The indictment of the air traffic controllers caused a second sea change in the tone of press coverage on the culprits of Brazilians worst ever aviation accident. For the first month after the accident, the Legacy pilots were vilified as cowboys whose dangerous flying led to the accident. As problems with Brazilian air traffic control systems then became apparent, press coverage went through its first metamorphosis and turned to the role of the air traffic control systems in the accident, while still claiming that the Legacy pilots' "incompetence" was a major factor. Now the air traffic controllers, who assigned both aircraft to the same path and altitude, have taken center stage, with the Legacy pilots moving into a secondary role.

¶13. (SBU) Comment continued: It is interesting that the prosecutor decided to indict the controllers despite the federal police's claim that they were under the military justice system and therefore could not be indicted by civilian courts. It is unclear why, eight months

BRASILIA 00001006 003 OF 003

after the accident, the Air Force has now decided to start its own criminal investigation of the controllers, although it may be an attempt to remove them from the civilian criminal system.

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